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Making Forest Policy in an Imperfect World

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Making Forest Policy in an Imperfect World

By James W. Giltmier,
Senior Associate, Pinchot Institute for Conservation

At a conference entitled
The National Forest Management Act in a Changing Society:
1976 - 1996

September 16-18, 1996, University of Colorado School of Law, Boulder, Colorado

To begin with, let's get something straight. There is nothing imperfect about the world. It is as perfect as it knows how to be.

The problem is not about our relationship with nature. It is about our relationship with one another. Otherwise, why would they be holding this conference in a law school?

We came out of the woods; we learned how to cultivate crops and domesticate animals.

We learned -- after a fashion -- that we could save our species from extinction only if we worked together in groups.

Then we spent 12,000 years pitting our groups against one another.

But against this backdrop of violence, we began to formulate laws. King Hammurabi established a code for civilized existence in Babylon at sometime before 1750 B.C.

Great stuff. If you make the king angry you are dead Fred. You don't need the supreme court to interpret that.

Somewhat later there came the posse comitatus whose job it was to help keep the local peace. Justice always came to those who had big horses and long swords.

Against this legacy of regulated violence came humanist philosophers like John Locke, who believed we might like one another a lot better if we stopped killing one another for no good reason.

From beginnings like these -- and not exclusively these -- arose the

foundations for freedom and democracy. This smoothing out process -- this civilization -- only took about two million years.

How fortunate we are that we now live in a society where public servants' lives are threatened by dope growers and wild fire, and at the same time by the law-abiding citizens whom they are trying to protect.

There is a myth that public policy is formulated by the creation of new laws. That is sometimes true, but it seldom is.

Often as not, public policy is what the public generally agrees on as accepted practice, and not what is on the law books. Frequently the public simply ignores laws it does not like, such as prohibition and automobile speed limits.

Frequently the Executive Branch of the government simply refuses to implement laws that Congress has enacted and that the President has signed. This happens through temporization, pretending the law was never passed, by failing to ask for appropriations or by refusing to spend appropriated funds.

I recall many years ago an urgent letter, pertaining to the former Farmers Home Administration, traveled undelivered, around on the automated mail delivery cart at the USDA administration building.

It traveled that route for two weeks.

I only know about this because the letter was from members of the Senate Agriculture Committee telling the Secretary of Agriculture that Farmers Home was violating the spirit and intent of the Rural Development Act of 1972.

I had drafted the letter for the committee members, and had it not been for one of my snitches in the South building, the letter -- yellowing with age -- would still be on that beeping cart, creeping eerily through the dimly lit corridors of the USDA.

Policy is often created by bureaucrats. Sometimes it is by bureaucrats who are over zealous, or those who are not zealous enough. Most often it is by those who are acting within the framework of existing law in a planned way for the supposed benefit of the taxpayers.

Start with the so-called 1897 Organic Act of the Forest Service. How could anyone read that small collection of words and construe from it the creation of an agency of 35,000 people managing 190 million acres of land, touching the lives of

millions of people? It isn't there. Gifford Pinchot invented the whole thing out of his own head.

The Forest Service began to peddle on Capitol Hill some trial words for the Multiple-Use and Sustained-Yield Act five years before it was enacted in 1960. Senator Hubert Humphrey and Congressman Harley Staggers introduced a version handed to them by Ed Crafts of the Forest Service in 1955.

The so-called Church Guidelines for clearcutting, now a part of the National Forest Management Act, were written by Leon Cambre, a Forest Service employee who was working as a Congressional fellow for Senator Frank Church.

Most federal agencies approach new laws with an attitude of avoidance. They want to do as little as they can to change the way that they are accustomed to doing business, while still carrying out the intent of new laws.

This is just a personal observation. But it has seemed to me over the years that the Forest Service approaches these matters in a totally different manner. With regard to the RPA and the National Forest Management Act, the agency took what were fairly simple legislative mandates, and turned them into nightmarish tropical jungles as they developed endless vines of regulatory baloney sausage.

If you work for the Forest Service, and you don't like the current appeals process, don't blame the Congress. The Forest Service designed it.

Don't misunderstand me now. I am not being critical. We are talking here about a federal agency that always does more than is expected of it. It's called "a can-do spirit." But make it clear that not all of the slings and arrows are coming from outside the castle.

If you have not noticed, I have said a lot about national policy, and the U.S. Congress is not yet in the picture in a major way.

A way to skirt the law, especially for line agencies, is to turn enforcement over to parking lot attendants. That is to say, you take it out of the main stream of line activity and make a law something special. It is revered, adored and salaamed. It is dressed in the richest finery.

But still it doesn't matter.

It has nothing to do with the day-to-day operations of the agency in question, except that every few years a new program of work has to be published.

I think this case applies to the Forest and Rangeland Renewable Resources Planning Act of 1974.

RPA has created an expensive planning process. Yet critics cannot be easily rebuffed if they fail to see how the process has changed very much the way the agency does business.

RPA is still sitting in the parking lot, despite efforts by former Chief Dale Robertson (who said the 1990 RPA Program was the strategic plan of the Forest Service), Jeff Sirmon, a former Deputy Chief (who trotted out the program regularly to see if current agency activity was consistent with the program), and Tom Mills, (who had the grit to do it over and over again until he got it right).

I told someone a while back that Tom Mills was mulish. He was and he is. If he had not been, RPA would have started its decline into irrelevance long before now.

What is the RPA? It is an opportunity for all of us to have a better understanding of the condition of all of our forests than we previously had. I emphasize all of our forests because RPA clearly addresses all forests, in terms of the information needed, and not just the National Forests.

People say that RPA is **process** legislation; that it has no policy consequences. I used to believe that too. But RPA provides for a scientific assessment that could have been used to demonstrate for decades to come the importance of forestry research to our understanding of natural systems. If the finest forestry research outfit in the word said something was so, it is likely that it would generally be considered so.

It provides for a program that could have been used to demonstrate leadership; that the Forest Service knew what to do with respect to the future of forestry in America.

It provided for planning. The Forest Service was already planning on a piecemeal basis. Former forestry leaders, Dick McArdle, Ed Crafts, Boyd Rassmussen and Reynolds Florance told us to package it so that all of the plans were related to one another. Clearly the intent was to get a macro-scale understanding of what the agency was up to.

Clearly, integrated planning would provide for better implementation of the Multiple-Use and Sustained-Yield Act.

(Parenthetically, integrated planning is the only way that Ecosystem

Management or Sustainable Forestry will ever occur.)

And finally, the RPA law contains a carefully crafted program evaluation provision, drafted for the Senate by the General Accounting Office. The Forest could have used it to demonstrate every year what solid accomplishments were being achieved in forestry research, in state and private forestry, and on the National Forests.

The driving force behind the RPA was to get more money for the Forest Service; to show that it was realizing a great deal with the taxpayers' money. If that could be more systematically demonstrated each year, the theory was that Congress would be more generous with appropriations.

As I now view it, it is more important that the Forest Service show the benefits it is providing for dollars received, than that the Program be tied on a line-by-line basis to the budget for the agency.

But once again the RPA was under the care of the benevolent parking attendants. It was not connected to program activities in any meaningful fashion. The real, day-to-day, operating Forest Service was totally detached from the RPA staff. And it largely remains that way today.

The most recent draft of the program focused almost entirely on timber in the National Forests, largely ignoring research and other forest lands. It droned on endlessly about ecosystem management without providing a hint of what that meant. It said that recreation was the future of the National Forests, but not what that future meant in real terms.

I do not mean any of this as criticism; I offer these comments only with great personal disappointment over an opportunity lost.

Many, many agency people have tried to integrate the RPA into the fabric of the corporate culture of the Forest Service.

The dreamers who brought the idea and ideals of RPA to Capitol Hill always thought that such a law would provide a long-term boost for an agency that they felt was out-performing most other federal agencies, but did not have the recognition or the money it deserved.

They also wrongly believed that if there was enough funding, every competitor for National Forest lands could get everything they wanted from those public lands.

The naive people and organizations who promoted the bill included conservationists, environmentalists, the timber industry, Hubert Humphrey, Bob Wolf and me.

However, many Forest Service middle managers often treated RPA as an enormous pain in the neck. Already burdened with a growing number of environmental laws like NEPA to divert their attention from every day work, they effectively said, "We have the Multiple-Use and Sustained-Yield Act. What do we need this thing for?"

What a mistake!

The question in my mind is, if RPA is like a live-in uncle who is slightly senile, what are you going to do with him? The whole planning process that drives the National Forest Management Act is tied to RPA. It would be better for everyone if uncle was tucked away into an old folks home. But all of the family money is in a safety deposit box. Only uncle has the key, and he can't remember where it is.

I have spoken to some extent about how policy is made without legislation. Perhaps this is a good time to discuss the legislative process in Washington.

Legislators often say things like, "Heaven help us if lawmaking gets turned over to the courts." The public often says about the same thing about legislators.

Democracy is a very messy business. Winston Churchill was often quoted by one of my favorite senators, Senator Henry Bellmon of Oklahoma. He said if you like either sausages or law, don't watch either one of them being made.

Laws are enacted by accident; under the cover of darkness; under the pressure of crisis, and occasionally because of the build up of public opinion for or against some cause.

Congress is not an efficient policy-making body, even when it takes a lot of time to deliberate on an issue, such as the energy crisis of the 1970s.

It is best to think of Congress as a fire department, handling spot crises; a well-meaning, yet often, inept ombudsman; or perhaps as a body selling out to the interest group that you, as an individual particularly hate.

Is that a can't win profession, or what?

The RPA was legislation that a fairly broad-based group of knowledgeable

people thought would be good for the country. Since it did not cause any nut case groups to come out of the woodwork, it was enacted with little debate nor fireworks.

The original RPA bill contained a section 201 that set aside words of the Organic Act of 1897 that restricted timber harvesting on the National Forests.

At that time, the Izaak Walton League of West Virginia, as part of an effort to stop clearcutting in the Monongahela National Forest, used the harvesting prescription words in the old law to file suit to stop the practice. The law said it was necessary to mark every tree to be cut, and harvest only dead, dying, diseased or down timber.

Real world forest practices had gone far beyond the prescriptions in the law in terms of what was good practice and good science. The Forest Service and the timber industry asked us to remove section 201.

They believed that the government would win the suit filed by the Ikes. We deleted the language, and the government lost -- twice -- in the district court in West Virginia, and in the Fourth Circuit Court of Appeals. The courts did not care about real world forest practices. The judges read the words of the law, and they understood what the words meant.

Timber harvesting on all of the National Forests was on the endangered list.

Suddenly there was a crisis.

The environmentalists organized themselves into a combat team headed by Tom Barlow, then of the Natural Resources Defense Council. The forest products industry even generated a mass mailing campaign by Alaskan loggers.

Former Congressman Tom Foley wanted to write a simple bill that said the Forest Service could not be sued. But we had gone far beyond the point where anything like that could happen. Because timber harvesting on the National Forests was on the table, everything was on the table.

The time of civil discourse had come to an end. It was no longer possible to get all sides of an issue together for informal meetings to discuss what Bill Towell of the American Forestry Association called "areas of agreement." The environmentalists had won two big court decisions. They didn't feel that they needed "fire side chats" with their enemies.

As for the forest products industry, its representatives appeared confident that their friends in Congress would get them out of the mess.

It turned out that there were three issues to be considered. First, should professional resource managers continue to have a maximum amount of freedom in natural resource management so that each land form being considered could be dealt with in the unique manner called for at a given time? Secondly, should the Forest Service be required by law -- laws such as the 1897 Organic Act -- to manage lands under sharply constrained rules that allow for little leeway in decision-making? The third choice was to reach common ground in between the first two alternatives.

It was number three that the Congress chose, because when given a choice between extreme alternatives, Congress almost always chooses to split the difference.

The Church Guidelines are in the law. There are some other reasonable constraints as well. But mostly what the act does is send a message to the Forest Service to use common sense in making management decisions. It makes it clear that forest rangers do not own those forests, and that they must consult with the public at each level of major decision-making. If that is time consuming and expensive, I would match it up against the cost of the appeals process or litigation any time.

I am not going to play the blame game here. As far as I know there were no evil people involved in this policy test. Each of the people involved pursued what seemed to them to be worthwhile goals at the time various things played out. At the time of these contests each person sets up his or her own set of good guys and bad guys so that they know where to fire their rhetoric. But there is nothing illegal or immoral about enlightened self interest.

Despite its problems, the Forest Service remains one of the finest institutions in government today. I have deep respect and fondness for it.

Radical environmentalists have accomplished many worthwhile things to alert the society to a long list of serious and real environmental problems.

Given its new Sustainable Forestry Initiative, the forest products industry should be a model of environmental self-regulation for many other industry groups.

Now I will say a few words about the dimly seen future.

In 1962 the Supreme Court issued a ruling in a case called Baker vs Carr. The rule said essentially that everyone's vote was equal to everyone else's, and that distribution of House Congressional seats could not be weighted in favor of rural areas with low populations. The terminology of the day was "one man, one vote."

Since that decision, the Congressional seniority system and some other factors have arranged to slow down its effects, to protect rural voters, and their representatives, who care about agriculture and forestry. However, since the 1970s the House and the Senate have reorganized themselves to give more power to individual members, and less to the committee chairmen. The day will probably never again come when a man like Jamie Whitten could be called "the real Secretary of Agriculture."

More than 60 percent of the USDA budget is now spent for food distribution programs, and this year was the beginning of the end of multi-billion-dollar subsidies for farmers.

As senators like Sam Nunn, Howell Heflin and Bennett Johnston leave, their places will be taken by IBM salesmen and others whose values are the values of the suburbs.

North Carolina 15 years ago was easily replacing the trees that were being harvested there. Today it may be the most rapidly urbanizing state of them all, and its forests are not being sustained -- they are being paved over.

The entire economy of the Pacific Northwest, including Montana and Idaho, is changing every bit as rapidly as in the South. New kinds of people and industries are moving in, and as each day passes forest products become less and less important to overall state economies.

You may respond that this situation is not the case in rural areas of the Northwest. But there are fewer and fewer voters in many rural areas. The immigration of retirees is causing the creation of new kinds of businesses. These industries don't pay as well as bucking logs, but they are there for people who want to work. There are now more retired elderly in Oregon than there are in Arizona.

Americans have demonstrated many ways that when they are in the market place they care about price first and quality second. It doesn't bother them to purchase foreign-produced goods if the price is right.

Increasingly they will not care that we are a net wood importing nation, as

long as the wood they need is in the lumber yard when they need it. Increasingly they will be looking at forests as places for recreation now wood.

For the past several years, many forest products companies have worked very hard at ending their reliance on federal timber, because of the unreliability of the harvest.

The question for tomorrow is where will the next Jennings Randolphs, Hubert Humphreys, Jim McClures, Herman Talmadges and Mark Hatfields come from? What will motivate them? Will they even care about the issues that concern us here today?

In American politics there's no point in leading a parade down Main Street if no one is following you.

James W. Giltmier is the Senior Associate for Communications of the Pinchot Institute for Conservation, an organization he has been with since 1989. Previously he worked in international trade with a Washington, D. C. law firm, and as a Representative of the Tennessee Valley Authority. From 1971 until 1981 he was a professional staff member of the Senate Agriculture Committee where he worked on matters pertaining to rural development and natural resources. Previously he was a journalist, working in newspaper and television news. He was won many journalism and conservation awards. He is an honorary member of the Society of American Foresters.